

373/100/B/12-RA
REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/100/B/12-RA/1222

Date of Issue 23/02/2018

ORDER NO. 70/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.02.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri. Kasim

Respondent : Commissioner of Customs (Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 43/2012 dated 25.09.2013 passed by the Commissioner of Customs (Appeals) Trichy.



ORDER

This revision application has been filed by Shri. Kasim (herein after referred to as the Applicant) against the order no C.Cus No. 43/2012 dated 25.09.2013 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 04.12.2010 from Sri Lanka. The Applicant was intercepted by the officers of Air Intelligence Unit, Trichy after he had cleared through immigration. A personal search of his person resulted in the recovery of 9 (nine) gold biscuits of foreign origin weighing 994.5 gms valued at Rs. 20,68,560/-. The Original Adjudicating Authority vide his Order-In-Original No. 07/2012 ADC dated 03.02.2012 ordered absolute confiscation of the impugned goods under Section 111 (i) & (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 4,00,000/- under Section 112 (a) of the Customs Act, 1962. The Applicant was arrested and subsequently released on bail.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 43/2012 dated 25.09.2012 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia on the following grounds that ;

4.1. The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

4.2. The Hon'ble Supreme Court in the case of Om Prakash vs Union of India has categorically stated that the main object for enactment of the said Act was recovery of excise duties and not really to punish for infringement of its provisions.

4.3 There is no provision for absolute confiscation of goods, there are several judgements by the Revisionary Authority and by Supreme Court that Adjudication Authorities should exercise the power of discretion under section 125 of the Customs Act, 1962 because the same is mandatory



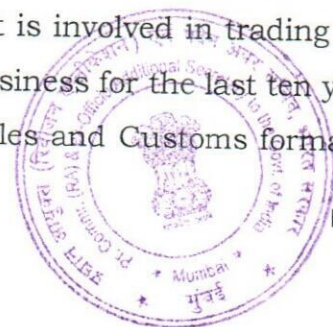
4.4 That gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty. Even assuming without admitting that gold is a prohibited item the authority can still release the gold on redemption fine using discretionary powers. The applicant is willing to pay appropriate redemption fine and penalty.

4.5 The absolute confiscation of the gold and imposed personal penalty was harsh and unreasonable.

The Revision Applicant has cited various assorted judgments in support of his case, and prays for release of the gold on redemption fine and also reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals where orders were issued for release of the gold on redemption fine and penalty. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records it is seen that the gold was primary form and not jewelry. The gold was concealed ingeniously as it was wrapped in insulation tape and hidden in Dress (pants) with the intention to hoodwink the customs authorities. The applicant was intercepted while crossing the exit of the Green Channel. This clearly indicates that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold bar without payment of customs duty. Government also notes that the impugned gold biscuits not declared by the passenger as required under Section 77 of the Customs Act, 1962. The Applicant has not stayed abroad for the requisite period of six months and therefore not an eligible passenger to import gold. Government also observes that as the Applicant is involved in trading of goods from India to Sri Lanka and having conducted this business for the last ten years has travelled earlier and is therefore well aware of the Rules and Customs formalities on



373/100/B/12-RA
arrival into India. In his statement he has admitted that the impugned gold was handed over to him by a friend to be handed over to him to an agent outside Trichy airport, he undertook the task for monetary consideration. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal. The impugned gold has been rightly confiscated absolutely and the Revision Application is liable to be rejected.

7. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal 43/2012 dated 25.09.2012.

8. Revision Application is dismissed.

9. So, ordered.

Ashok Kumar Mehta
20.2.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 70/2018-CUS (SZ) /ASRA/MUMBAI

DATED:

23-02-2018

To,

Shri Kasim
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

S. R. Hirulkar
23.2.18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Trichy.
2. The Commissioner of Customs & Central Excise (Appeals), Trichy 620 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

